IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5388 of 1997 to 5408 of 1997
with
CROSS FIRST APPEALS NOS. 742 OF 1998 TO 792 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BAKULESH MADHUSUDAN

Versus

DY COLLECTOR & LAO

Appearance:
MRS KETTY A MEHTA for Petitioners
Mr.V.M. Pancholi, AGP for Respondent No. 1
Mr. Kartik Thaker, for M/S TRIVEDI & GUPTA for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE D.P.BUCH

Date of decision: 15/09/2000

COMMON C.A.V. JUDGMENT : (Per: Kadri, J.)

1. Appellants-original claimants have filed First Appeals Nos.5388 of 1997 to 5408 of 1997 under Section 54 of the Land Acquisition Act, 1894 (to be referred to as "Act' for short) read with Section 96 of the Code of Civil Procedure, 1908, for enhancement of compensation by challenging common judgment and award dated July 25, 1997, rendered by the learned Assistant Judge, Surat, in Land Reference Cases Nos. 118 of 1988 to 168 of 1988.

2. First Appeals Nos.742 of 1998 to 792 of 1998 are filed by Acquiring Body, original opponent no.2, namely, National Thermal Power Corporation ('NTPC' for short), challenging the aforesaid common judgment and award. By impugned common judgment and award, learned Assistant Judge had determined market value of acquired lands of village Mora, Taluka: Choriyasi, District Surat, at the rate of Rs.20/- per sq.mtr as on February 21, 1986.

3. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common judgment.

4. Chief Project Manager (GTPP), Delhi, made a proposal on December 16, 1985, to the State Government for acquiring agricultural lands situated at village Mora, Taluka Choriyasi, District Surat, for the purpose of 'Gas Base Thermal Power Project' for NTPC. The said proposal was scrutinized by the State Government and preliminary notification to acquire lands of the claimants was issued under Section 4(1) of the Act which came to be published in the Government Gazette on February 21, 1986. Deputy Collector, Choriyasi, was appointed as Land Acquisition Officer for the above acquisition proceeding, who, after following usual procedure under Section 5 of the Act, had forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government, having satisfied that 230 Hectares of lands, out of which 138 Hectares of land belonged to Government whereas 92 Hectares were agricultural lands belonged to private owners of village Mora, which were specified in the notification published under Section 4(1) of the Act, were needed for the public purpose, made declaration under Section 6 of the Act which was published in the Government Gazette on April 29, 1986. Interested persons were, thereafter, served with notices

under Section 9(3)(4) of the Act for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.1,50,000 per Acre, but, having regard to the materials placed before him, the Land Acquisition Officer made his award on January 18, 1988 by dividing acquired lands into three categories and offered compensation for
(a) acquired lands situated at north of Surat-Hazira State Highway at the rate of Rs.35,000/- per Hectare, i.e. Rs.3.50 ps per sq.mtr.
(b) acquired lands situated towards south of Surat-Hazira Highway at the rate of Rs.32,000/- per Hectare, i.e. Rs.3.20 ps per sq.mtr.
(c) acquired lands situated towards interior south of Surat-Hazira State Highway, at the rate of Rs.30,000/per Hectare, i.e. Rs.3.00 ps per sq.mtr.
The Land Acquisition Officer, by his award, offered compensation of Kharaba land, admeasuring 0 Hectare 30 Are 36 sq.mtr., at the rate of Rs.1.00 per sq.mtr.

5. The claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the Court for determination of adequate compensation. Accordingly, references were made to the District Court, Surat, which were numbered as Land Reference Cases Nos. 118 of 1988 to 168 of 1988. All the land reference cases came to be consolidated and the parties led common evidence in Land Reference Case No.140 of 1988. In the applications, it was claimed that compensation offered by the Land Acquisition Officer for acquired lands was too low and the Land Acquisition Officer had not taken into consideration quality of land and various sale instances produced on behalf of the claimants. It was claimed that it was not proper for the Land Acquisition Officer to consider and compare saline lands which were acquired for Reliance Industries Limited at the rate of Rs.30,000/per Hectare for the purpose of determination of market value of present acquired lands. It was further claimed that government land admeasuring 138 Hectare 46 Are 43 sq.mtr of village Mora was sold at the rate of Rs.450/- per Are, which was not at all taken into consideration by the Land Acquisition Officer while offering market price of acquired lands. It was further claimed by the claimants that the same lands were placed under acquisition for the purpose of Gujarat Electricity Board by notification under Section 4(1) of the Act dated April 16, 1984, and the said acquisition was canclled and no intimation about cancellation of notification was given to the claimants

and, therefore, the claimants were entitled to compensation from the date of first notification and the Land Acquisition Officer should have considered this fact and should have granted interest from that date. It was further pleaded that the Land Acquisition Officer ought to have considered existence of GIDC Industrial Zone, Hazira Ship Yard, Port Complex, ONGC, GSPLS, KRIBHCO Industries, Larsen & Toubro Industrial Complex which indicated that the whole area was declared as industrial zone and the Land Acquisition Officer should have considered existence of those industries and the development which was in existence prior to date of notification under Section 4(1) of the Act. It was further pleaded that village Mora was included in Hazira Area Development Authority (HADA) and present acquired lands were placed in the residential zone and that aspect was not taken into consideration by the Land Acquisition Officer for fixing market price of acquired lands. The claimants, further, pleaded that area where present acquired lands were situated was fast developing and many industries and residential premises of the Housing Board had also come up, which aspect was not taken into consideration by the Land Acquisition Officer. The claimants further stressed that, because of acquisition, they had become landless and had suffered heavy financial loss. It was claimed that the Land Acquisition Officer should have fixed market price of Karabha land on par with other acquired lands. It was further claimed that the Land Acquisition Officer had erred in relying upon report of NTPC and L & T by holding that acquired land was of low level and its fertility was badly affected because of tides and flood waters of sea and river Tapti. The claimants, further, stated that finding of the Land Acquisition Officer that acquired lands were away from Hazira-Surat State Highway and were 3 to 5 feet below the sea level was totally wrong. It was claimed that all acquired lands were having high fertility and were of even level. The claimants, in the reference applications, had claimed compensation at the rate of Rs.3750 per Are for their acquired lands. It was, further, stated that family members of the claimants, whose lands were acquired, were not taken in service by NTPC or were not provided facility on priority basis in allotment of shops in the township of NTPC and another benefits.

6. The Land Acquisition Officer filed written statement at Exh.6, inter alia, contending that all the materials placed before him were properly appreciated before fixing market price of acquired lands. It was, further, averred that the Land Acquisition Officer had

considered all the sale instances, situation of acquired lands and had properly divided lands into three categories, considering the distance from the State Highway as well as nearness to the sea-shore and Tapti river. It was averred that the claimants had made exaggerated claim in the reference applications. Compensation offered by the Land Acquisition Officer was just and adequate and, therefore, applications be dismissed with costs.

7. Appellant-NTPC filed written statement at Ex.10, inter alia, contending that it was not correct that market price of the lands in vicinity of acquired lands was Rs.254.50 ps per sq.mtr or that the claimants were entitled to claim compensation at the rate of Rs.250 per sq.mtr. It was contended that sale instance of Survey No.650 of village Hazira was 15 kms away from acquired lands and, therefore, the Land Acquisition Officer was justified in not taking into consideration said sale instance for fixing market price of acquired lands. It was further contended that sale instances relied upon by the Land Acquisition Officer were comparable with present acquired lands. It was admitted by the Acquiring Body that notification issued for acquisition of GEB was not cancelled, but, for that, the NTPC cannot be held responsible for the period prior to date of notification issued for the purpose of NTPC. It was denied that there was development of GIDC Industrial Zone, Hazira Ship Yard, Port Complex, ONGC, GSPLS, KRIBHCO Industries, Larsen & Toubro Industrial Complex in the vicinity of acquired lands at the time of issuance of notification under Section 4(1) of the Act. It was contended that acquired lands were in low lying area and were affected by tides and monsoon water. It was further averred that the claimants had accepted the amount awarded by the Land Acquisition Officer without protest and, therefore, the claimants were not entitled to file applications under Section 18 of the Act and, hence, the applications be dismissed with costs.

8. The Reference Court consolidated all the reference cases and the parties had led common evidence in Land Reference Case No.140 of 1988, which was treated as main Land Reference Case. On the basis of rival assertion of the parties, the Reference Court framed common issues at Exh.12. The claimants, in support of their claim of enhanced compensation, examined following witnesses:-

I. Maganbhai Nathabhai Patel Exh.21
II. Thakorebhai Mathabhai Patel Exh.84

III Jagdishbhai Rambhai Patel Exh.165
IV Rameshbhai Bhagabhai Patel Exh.259
V Harkishanbhai Icchhubhai Patel Exh.261
VI Ful Mohmed Ismail Exh.262
VII Jahagir Jamshedji Bhathena Exh.264
VIII Jaikishandas Nagarji Patel Exh.268
IX Yogeshbhai Mapabhai Patel Exh.269.

The claimants produced certified copies of 7/12 extracts of acquired lands vide Exh.151, 174 to 250, sale deeds at Exh.102 to Exh.142, Exh.143 and Exh.144, reference to which shall be made at the appropriate stage. Award of the Land Acquisition Officer was produced at Exh.22. The claimants had also produced development map at Exh.88 issued by HADA.

9. On behalf of the appellant-NTPC, following witnesses were examined.

I Vimalchandra Jeshmal Kotari, Senior Manager (O & M) - Civil of NTPC, at Exh.288
II Deputy Manager (Personnel & Admn.), Mr. Sivastian Joseph, at Exh.297
III Executive Training Personnel Mr. Dhuratai Seshalapati Rao, at Exh.307
IV Avdheshkumar Srikrishna Chandra Sharma, Engineer, Construction Division of NTPC, at Exh.314.

The appellants produced survey report at Exh.285; copies of letter written by Deputy General Manager, Mr. J.N. Sinha, to the Secretary, Revenue Department, dated January 24, 1990, at Exh.295; award of Land Acquisition Officer with regard to lands of village Mora which was acquired for GIDC by issuance of notification dated March 4, 1986 at Exh.315; and award of Land Acquisition Officer in respect of lands acquired for GIDC for village Hazira by notification issued on February 12, 1987 at Exh.316.

10. The Reference Court, on appreciation of oral as well as documentary evidence produced by the parties, deduced that sale deeds relied upon by the claimants were not relevant and comparable for the purpose of determination of market value of present acquired lands. The Reference Court further deduced that sale deeds Exh.102 to 130 were in respect very small area of non-agricultural lands. The Reference Court further deduced that sale deed Exh.144, which was in respect of land bearing Survey No.523, admeasuring 2 Acre 11 Gunthas, situated at village Ichhapore, was not genuine sale transaction, because vendor Jaikishandas Exh.268 had admitted in his cross examination that the said land was

sold to pay up dues of his debtors and for some personal expenses and vendee, Dineshchandra Shankerlal Patel, was his close relative and he was also in need of land and said Dineshchandra Shankerlal Patel had paid price of land as demanded by him. The Reference Court was of the opinion that survey report Exh.285 indicated that acquired lands were useful and beneficial to NTPC for establishment of thermal power station as water, electricity and road facilities and H.B.J. gas pipeline were available for establishment of said thermal power station. The Reference Court discarded different categorisation of acquired lands as done by the Land Acquisition Officer in his award. The Reference Court deduced that, in earlier acquisition of village Kawas, the Court at Surat had passed various awards, more particularly the award related to lands of village Kawas which were acquired for the purpose of Hazira Industrial Colony by the GIDC, notification of which under Section 4(1) of the Act was published in the year 1988 and the Reference Court at Surat had determined market value of acquired lands of village Kawas at the rate of Rs.25/per sq.mtr. against which the original claimants had filed appeals in the High Court of Gujarat and the High Court of Gujarat had enhanced determination of market value of acquired lands of village Kawas at the rate of Rs.33/per sq.mtr. The Reference Court further observed that the State Government and Acquiring Body had preferred appeals in the Supreme Court, being Civil Appeals Nos.11924 of 1996 to 11934 of 1996 arising from SLP (C) Nos. 18 of 1995 to 69 of 1995 wherein the Supreme Court had reduced amount of compensation to Rs.22/- per sq.mtr. after deducting 1/3rd from the amount of determination of market value under the head of development charges. The Reference Court had determined market value of present acquired lands of village Mora, relying upon the judgment of the Supreme Court rendered in Civil Appeals nos.11924 of 1996 to 11934 of 1996 at the rate of Rs.20/- per sq.mtr. The Reference Court had extended statutory benefits under Sections 23(1-A) and 23(2) of the Act, in favour of the original claimants, which has given rise to filing of these appeals by the appellants-claimants as well as the Acquiring Body.

11. Learned counsel, Mrs. Ketty A.Mehta, appearing for the claimants, learned advocate Mr. Kartik Thakar, for M/s. Trivedi & Gupta, appearing for the Acquiring Body, learned Assistant Government Pleader Mr. V.M. Pancholi, appearing for the State Government, have taken us through the entire voluminous record produced before the Reference Court.

12. Learned counsel for the original claimants submitted that determination of market value by the Reference Court at the rate of Rs.20/- per sq.mtr. was based on mere conjectures and the Reference Court had erred in deducting development charges. Learned counsel for the claimants contended that sale deeds Exh.102, 103, and 104 were in all respects comparable instances, which reflected market price of lands under the said sale deeds at the rate of Rs.68.47 per sq.mtr. and the said sale deeds were executed in near proximity of time of issuance of notification under Section 4(1) of the Act. The learned counsel for the original claimants further submitted that acquired lands were having potentiality because in the year 1984 same lands were placed under acquisition for the purpose of Gujarat Electricity Board and the said notification was not cancelled. Learned counsel for the claimants further submitted that due to potentiality of lands, same lands were again placed under acquisition for the purpose of NTPC, which showed that lands had potentiality and the said lands were suitable for establishment of gas-based thermal power station and the said lands had other facilities like water, electricity, road and gas pipeline. Learned counsel for the claimants further submitted that lands of village Mora and adjoining villages of Kawas, Icchapore, etc were placed in Hazira Town Development Scheme, 1985, which aspect was not taken into consideration by the Reference Court while determining market value of present acquired lands. Learned counsel for the claimants further submitted that acquired lands were having industrial potentiality as, in the nearby locality, ONGC, Reliance Industries, L & T, and KRIBHCO had established their industrial units. Learned counsel for the claimants further stressed that Survey Report Exh.285 indicates that acquired lands were more suitable to establish gas-based thermal power station because of existing facilities of Surat-Hazira road, high tension electricity supply and H.B.J. gas pipeline. Learned counsel for the claimants contended that the Reference Court had erred in deducting 5% for acquired lands which were new tenure lands in view of the reported decision of the Supreme Court in the case of State of Maharashtra vs. Babu Govind Gavate, reported in AIR 1996 Supreme Court 904 and, therefore, the appeals filed by the claimants be allowed.

13. Mr. Kartik Thaker, learned counsel for the Acquiring Body, submitted that determination of market value by the Reference Court at the rate of Rs.20/- per sq.mtr was based on no evidence as the Reference Court had already discarded sale instances relied on by the

claimants and, therefore, there was no material available before the Reference Court for determination of market value and, therefore, the reference applications ought to have been dismissed. Learned counsel for the acquiring body further submitted that acquired lands were highly uneven and having no potentiality because due to flood, waters of river and sea, the lands had become marshy and having no fertility and the said lands were lying idle since last many years as deposed by the witnesses examined by the Acquiring Body. Learned counsel for the Acquiring Body emphathetically submitted that acquired lands were lying in fallow wherein no crops were raised and grass was grown because of water stagnation and due to tide of sea which was just near the acquired lands. Learned counsel for the Acquiring Body further submitted that, for acquired lands belonged to the State Government, market value was fixed at Rs.4.50/- per sq.mtr. and, therefore, the Reference Court had erred in awarding compensation of private acquired lands to the claimants at the rate of Rs.20/per sq.mtr. Learned counsel for the Acquiring Body further submitted that, for lands situated in village Ichhapore which were acquired in 1982 for KRIBHCO, the High Court had determined market value at the rate of Rs.12/- per sq.mtr and, therefore also, determination of market value at the rate of Rs.20/- per sq.mtr was highly excessive and the appeals filed by the claimants be dismissed and the appeals filed by the Acquiring Body be allowed. Learned counsel for the Acquiring Body submitted that, when the Reference Court had disregarded all the sale transactions produced by the claimants, there was no other alternative left to the Reference Court but to reject the reference applications filed by the claimants by upholding the compensation awarded by the Land Acquisition Officer. Learned Assistant Government Pleader, Mr. V.M. Pancholi, has adopted arguments advanced by learned counsel for the Acquiring Body.

14. Before dealing with the contentions of learned advocates for both the parties, it is necessary to appreciate the evidence on record. Claimants witness No.1, Maganbhai Nathabhai Patel, Exh.21, did not appear before the Reference Court for cross examination and, therefore, his evidence is of no importance and the Reference Court had rightly rejected his evidence. Claimant witness No.2, Thakorebhai Nathabhai Patel, Exh.84, had described situation of acquired lands. As per his evidence, present lands were previously acquired in the year 1984 for the purpose of Gujarat Electricity Board. However, the said acquisition was never cancelled but, in the year 1986, acquisition proceeding was again

initiated and present acquired lands were notified for the purpose of establishment of thermal power station by notification under Section 4(1) of the Act on February 21, 1986. The witness deposed that acquired lands were situated near Hazira-Surat State Highway and Magdalla Bridge was situated near acquired lands, which connected village Kawas with Sachin and Palsan. His evidence indicated that village Kawas was situated at a distance of 2 kms from acquired lands. He also deposed that, before issuance of notification of present acquired lands, railway line was already laid for KRIBHCO plant which was nearer to acquired lands. He stated that the said railway line was extended upto Gothan Railway Station. The witness, during his deposition, produced sale deeds Exh.102 to Exh.142. The witness deposed that village Mora was having facilities of bank, post office, high tension electricity, gas pipeline and irrigation. In cross examination, the witness deposed that high quality of grass was grown on acquired lands which was used as fodder for their cattle. Evidence of this witness does not establish that, except grass and low quality crops, such as juwar, crops of good quality were grown on the acquired lands.

15 Claimants' witness, Rameshbhai Bhagabhai Patel, Exh.259, deposed that government land, which was placed under acquisition, was at low lying area and was uneven. He deposed that, before the Land Acquisition Officer, they had claimed compensation at the rate of Rs.1,50,000/- per Acre, but, after gathering evidence in nature of sale deeds, and after having realised that their lands were likely to fetch more price, had claimed enhanced compensation at the rate of Rs.10 lakhs per Acre. He deposed that, when notification of present acquired lands was published, KRIBHCO, ONGC, L & T, ESSAR, and Reliance Industries had already established their units in Hazira Industrial Township. He deposed that they were raising crops of cotton, wheat, juwer and grass on acquired lands. In cross examination, the witness admitted that crop of cotton was raised on acquired lands during years 1980-1982 and since 1982 no crop of cotton was raised on acquired lands. He, further, admitted that in between 1982-1986, no crops of wheat and juwar were raised on acquired lands and only high quality of grass was grown on acquired lands which was mainly used for tethering cattle.

16 To prove sale transactions, the claimants had examined Harkishanbhai Icchhubhai Patel, Exh.261. He deposed that he was owner of land bearing Survey No.42, situated at village Kawas. He further deposed that he

also owned lands bearing Survey Nos.613 to 615 of village Icchapur. He deposed that he had converted his land situated at village Kawas into non-agricultural use and the same was, thereafter, divided into plots each admeasuring 14 ft x 45 ft. He claimed that each plot was sold at Rs.4000/-. During his deposition, he proved sale deeds Exh.102 to 130 for sale of plots to different persons. In cross examination, the witness admitted that lands of village Kawas were falling under residential zone in the development plan. The witness admitted that he divided his lands into plots in the year 1984-85 and the land was converted into N.A. use in the year 1985-86.

17 Claimants' witness No.6, Ful Mohmed Ismail, at Exh.262, deposed that he had purchased plot admeasuring 750 sq.ft for residential purpose from Champabhai Narayan Modi and had paid consideration of Rs.9999/-. He further deposed that the Deputy Collector had imposed penalty for not showing correct market price of document of sale and correct price was assessed by the Deputy Collector at Rs.14840/- instead of Rs.9999/-. The witness produced document of sale at Exh.263.

18 Claimants' witness No.8, Jaikishandas Nagarji Patel, Exh.268, deposed that he was owner of agricultural land bearing survey No.523, admeasuring 2 acre 11 gunthas situated at village Ichhapore. As per his say, agreement to sell said land was executed on July 18, 1984 with one Dineshchandra Shankerlal Patel by accepting Rs.71001 as earnest money. He deposed that NTPC was at a distance of 3 kms from his land bearing Survey No.523. The witness, during his deposition, had proved sale deed Exh.144, which was executed on November 28, 1986 for total consideration of Rs.3,49,999/-. The witness, during cross examination, admitted that village Mora was at a distance of 7 kms from village Ichhapore. He admitted that agreement to sell land bearing Survey No.523 was not registered document and he was not in possession of said agreement to sell at the time of deposition before the Court. He admitted, in his cross examination, that, as he was in need of money to pay up his debts, he had sold away his lands to Dinesh Chandra. He also admitted that, since he needed money for marriages of his son and daughter, and as he wanted to establish a textile industry, he had sold away his land by document Exh.144. The witness also admitted in his cross examination that Dinesh Chandra Shankerlal was his close relative and was in need of land and therefore he had purchased agricultural land bearing Survey No.523. He further admitted that Dineshchandra Shankerlal had agreed to pay

the price of land as demanded by him.

19 Evidence of witness examined by Acquiring Body, namely, Sivastian Joseph, Exh.297, is not useful for the purpose of deciding these appeals, as we are not concerned with employment offered by the NTPC to the claimants because of compulsory nature of acquisition of land in question. No grievance is made by the claimants in these appeals that they were not offered employment by the NTPC.

20 Witness No.2 examined by Acquiring Body, namely, Vimalchandra Jeshmal Kothari, Exh.288, deposed that he had served at Kawas Project as Deputy Manager from July 1986 upto August 1990. He deposed that he had many occasions to see and visit the site of the project. He stated that, when he first visited the site in July 1986, there was no crop on acquired lands. He described condition of acquired lands as uneven and water stagnated. He deposed that on some parts of acquired lands it was very difficult to walk and there were bushes of thorny trees. It was also stated that acquired land was at low level and therefore, water from sea and river used to enter into the lands at the time of tide and there was water stagnation which had badly damaged the fertility of acquired lands. He deposed that levelling work of acquired lands was done by M/s. Bhagirath Engineering Limited, and total amount of levelling was sanctioned at Rs.5,76,86,280/-. He deposed that soil testing of the acquired lands had revealed that because of presence of sulphate and fluorides in the soil, for construction of any project on such land, special precaution was to be taken for foundation work. The witness, in cross examination, deposed that he was not aware of survey number of acquired lands which was even or uneven or of low level and in which survey number water used to stagnate. The witness, however, emphathetically, deposed that land adjoining to the road was of small portion and large portion of lands was below the level of the road. He also deposed that only 40 meters length of acquired lands was on equal level of the Highway. The witness admitted that he cannot definitely say that what was the cost of levelling of the acquired government land and the acquired lands of private owners. The evidence of this witness further disclosed that when he first visited the project site of NTPC, he had only seen the industrial unit of KRIBHCO and had not seen ONGC plant, GIDC, IPCL, LPG, L & T, and Reliance Industries having come up nearby acquired lands. The witness denied that, before acquisition of the present lands for this project, all the basic facilities i.e. H.B.J. gas

pipeline, electricity, etc. were available. However, he admitted that water, electricity and road facilities were available before starting of the project. He deposed that private railway line of KRIBHCO was existing and except that there was no other railway line. He deposed that there was no approach road leading to Surat-Hazira Highway right from the site of NTPC.

21. Acquiring Body witness No.3, Dhuratai Seshalapati Rao, Exh.307, deposed that, he had joined the NTPC in October 1984 as Executive Training Personnel. He deposed that he joined Kawas Unit of NTPC in February 1987 as Personnel Officer and when he came to Kawas, he found that KRIBHCO unit was already in existence and ONGC and L & T were coming up. The witness during his deposition produced previous awards of the Land Acquisition Officer at Exh.315 and Exh.316 in respect of lands of village Kawas acquired for GIDC. The witness, during his cross examination admitted that he was not conversant with the present land acquisition proceedings for NTPC. He deposed that, on the north of plant area, Surat-Hazira State Highway was passing and entire acquired lands was divided in two parts by the State Highway. He deposed that NTPC Housing Colony was situated on the north of the State Highway. He deposed that, on the west of the project, there was boundary of Reliance Industries. He further deposed that KRIBHCO boundary was situated about 500 meters away from NTPC. The witness deposed that project of NTPC was a gas based project. He admitted that, subsequently, HBJ gas pipeline was passing through project area and site was selected for installation of project because of HBJ gas-pipeline was proposed to be passing through the area. He deposed that one of the objectives of the NTPC was to discharge social responsibility and one of the objects was also to protect environment and also in respect of rehabilitation.

22. Witness No.5, Srikishanchandra Sharma, Exh.314, deposed that he joined NTPC as Deputy General Manager in January 1986 and had an occasion to supervise the work of survey carried out by M/s. Chetan Engineers, Vadodara. He stated that the site of acquired lands was barren having thick bushes of English bavals and was situated 50 meter away from the road side and the remaining site was wet and meshy and filled up with water towards south of the Highway. He further stated that the water level on the acquired lands was upto knee deep and there were dry patches and cracks on the soil of acquired lands. He emphathetically deposed that he did not notice any crops or vegetation except bushes of English Bavals on acquired lands. He deposed that there was no irrigation facility

and, therefore, there was no agricultural operation carried out in any part of acquired lands. He further deposed that acquired lands were sloppy from north to south and lower contour was 3.2 meters elevation and highest was 4.6 meters from mean sea level. He clarified that portion under southern side was lower and portion under northern side was on higher level and the land was wet due to back waters of river and sea. He stated that soil at Kawas site was basically clavey which was covered with back waters from river and sea. The witness further stated that the soil being clavey, more expenses were required to be incurred for construction of the project. In cross examination, the witness admitted that NTPC project was mooted because of nearness of HBJ gas pipeline. He further admitted that survey report of Chetan Engineering produced at Exh.285 was found to be correct.

23. The award made by the Land Acquisition Officer produced on record at Exh.22 clearly indicates that acquired lands were within limits of village Mora which area was included in the proposed development plan of Hazira Area Development Authority and earmarked as agricultural zone as per the plan prepared by the Authority. The award also makes it clear that acquired lands were at a distance of 15 kms away from Surat city and were situated between KRIBHCO Fertilizer Complex and proposed Reliance Industries were towards west of village Mora. It also shows that village Suvali was adjoining to acquired lands. It shows that Hazira Township was situated on the northern side of State Highway. It further indicates that GSPCL and ONGC complexes were situated, towards south of acquired lands, and L & T Complex was to come up which was near river Tapti. The award further indicates that all acquired lands were classified as 'jirayat' type agricultural lands. Acquired lands situated towards south were at low level of about 3 ft deep and at the extreme southern end, level was deep by 4 to 5 feet below the level of land, which was parallel to State Highway. The oral evidence led by the claimants as well as the Acquiring Body and award made by the Land Acquisition Officer makes it abundantly clear that acquired lands were of inferior type of agricultural lands where no irrigation facility was available. Likewise, evidence produced on record indicates that agriculturists were not raising good crops, such as wheat, or cotton, but only inferior types of crops, like juwar and grass, were grown, which were essentially used as fodder for cattle.

24. Sale instances produced on behalf of the

claimants at Exh.102 to 121, relate to lands of village Kawas, which were executed in November 1985 and February 1986. Sale instances Exh.122, 127 to 130 were of village Ichhapore and were executed in the month of August 1986. Sale deeds Exhs.123 and 126 were of village Kawas and were executed in the months of May and August 1986. All these sale instances were in respect of area of 58.40 sq.mtrs and all plots were N.A. plots and were sold for price of Rs.4000/- per each plot. Plots under sale instances Exh.101 to 123, 127 and 128 were sold for Rs.4000/- per each plot. Plots under sale instances Exh.124, 125 and 126 were sold at Rs.15551/- per each plot and were non-agricultural lands. The above referred to sale instances were executed during years 1985 to 1988. Notification under Section 4(1) of the Act was issued on April 16, 1984 for acquisition for the purpose of GEB whereas notification under Section 4(1) of the Act for the present acquired lands for NTPC was published on February 21, 1986. Only sale instances Exh.102, 103 and 104 had been executed prior to date of publication of present notification for NTPC. It should not be lost sight of the fact that, when sale instances had taken place, notification for GEB was already in existence. With this factual background, it will have to be considered whether abovereferred to sale instances can be relied on for the purpose of determination of market value of present acquired lands.

25. Learned counsel for the Acquiring Body has vehemently submitted that sale instances, which relate to smaller plots, were executed after issuance of notification for acquisition for GEB in the year 1984 with the sole purpose to inflate the market value of the lands. In support of the submission, learned counsel for the Acquiring Body has placed reliance on the decision of the Supreme Court in the case of K.Posayya and others vs. Special Tehsiltar, reported in AIR 1995 Supreme Court 1641. In the above decision, vast extent of land of 50 acres was acquired for the purpose of Vengalraysagar Project, by notification under Section 4(1) of the Act on March 22, 1979. The claimants, to lay higher claim for acquired lands, had placed reliance on sale instance which had taken place on December 31, 1980, lands of which were situated at a distance of 3 to 4 kms from acquired lands. Possession of acquired lands was taken on April 15, 1977, i.e. prior to notification issued under section 4(1) of the Act. In light of above facts, the Supreme Court ruled that, "it would, thus, be clear that sale deed was brought into existence after notification and possession was taken of the land. This is the notorious document relied in all the references

running into 302." Relying on the above observation of the Supreme Court, learned counsel for the Acquiring Body submitted that sale deeds Exh.102 to 130, and 144, on which heavy reliance was placed by the claimants for enhanced compensation at the rate of Rs.70/- per sq.mtr, cannot be made basis for determination of market value of present acquired lands. The learned counsel for the Acquiring Body submitted that lands were previously acquired for the purpose of GEB by notification under Section 4(1) of the Act published on April 16, 1984 (Exh.309) and, to inflate market value of lands under acquisition, various sale deeds were executed, which cannot be relied on. In our view, submission of learned counsel for the appellants should be borne in mind while ascertaining the market value of the present acquired lands when reliance is placed on sale deeds produced by the claimants. Sale deeds Exh.102 to 130, admittedly, related to very small extent of area of 58 sq.mtrs to 60 sq.mtrs. Said plots were admittedly non-agricultural lands and vendor Harkishanbhai Icchhubhai Patel, Exh, 261, had first converted agricultural lands into non-agricultural use and divided into plots with a view to earn profit and had sold away the plots to different persons. In this references, we are concerned with acquisition of vast area of lands and, therefore, no reliance can be placed on the price fetched of small area of N.A. plots of about 60 sq.mtrs approximately, for the purpose of determination of market value of present acquired agricultural lands. Furthermore, the said plots were N.A. land and, therefore, it had fetched Rs.68.47 ps per sq.mtr. Therefore, in our view, the sale deeds of small plots of land do not provide good guidance for the purpose of determination of market value of present acquired lands, and no reliance can be placed on those abovereferred sale deeds.

26. The claimants had also placed reliance on sale deed Exh.263 which was in respect of land admeasuring 750 sq.ft, which was purchased by witness Ful Mohmed Ismail, Exh.262 for consideration of Rs.9999/-. Witness had deposed that he had purchased said small plot of land for his residential purpose. Agreement of sale, which was, as per the say of witness, Ful Mohmed Ismail, entered into in December 1985, was not produced before the Court. The said sale instance was in respect of very small area covering 750 sq.feet equivalent to 83 sq.yards. The witness was, previously, serving in defence and after taking voluntary retirement had settled in village Mora and as he was in dire need of accommodation for residence, he had purchased plot of land which was subject matter of sale deed Exh.263. The Reference Court

had also not placed reliance on the said sale deed on the ground that it was not genuine sale deed reflecting correct market value of lands. In our opinion, the Reference Court had rightly not taken into consideration sale deed Exh.263 for the purpose of determination of market value of present acquired lands.

27. The claimants had also placed reliance on sale deed Exh.144, which related to agricultural lands of Survey No.523 admeasuring 2 Acre and 11 Gunthas situated at village Ichhapore. Vendor Jaikishandas Nagarji Patel, Exh.268, was examined to prove sale deed Exh.144. The vendor had deposed that agreement to sell for the land which was subject matter of sale deed Exh.144, was entered into on July 18, 1984 and vendee, Dinesh Chandra Shankerlal, who happens to be cousin of the vendor, had paid Rs.71,001/- as earnest money. The said agreement to sell was not registered and the witness, in cross examination, admitted that he was not in possession of agreement to sell and therefore he was not in a position to produce it in the Court. In further cross examination, the vendor had admitted that, as he was in dire need of money and as he wanted to pay up his dues, he was compelled to sell the land. Cross examination of the vendor further revealed that vendee, Dinesh Chandra Shankerlal had other lands adjoining to the land which was sold under sale deed Exh.144, and, as he was in need of another agricultural lands, said Dinesh had purchased another agricultural land by sale deed Exh.144. Witness Jaikishandas Nagarji Patel (vendor) had further admitted in his cross examination that Dinesh Chandra had paid price of land as demanded by him. Land admeasuring 2 Acre 11 Gunthas was sold for consideration of Rs.3,49,999/-, i.e. approximately Rs.38/- per sq.mtr. Learned counsel for the claimants has vehemently submitted that the Reference Court had committed error in not placing reliance on sale deed Exh.144, which was executed on November 28, 1986 i.e. in near proximity of time of issuance of Section 4(1) notification for acquisition of present acquired lands. Learned counsel further submitted that sale deed Exh.144 should be taken into consideration for the purpose of determination of market price of present acquired lands, as it was genuine sale deed executed between vendor and vendee and it reflected correct market value of acquired lands, though situated in different village, but was adjoining to acquired lands. Sale deed Exh.144, dated November 28, 1986, was executed after nine months of issuance of notification of present acquired lands. Vendor, Jaikishandas Nagarji Patel, Exh.268, had deposed that agreement to sell was executed in 1984 but said agreement

to sell was not registered and the witness had not produced the original agreement to sell or copy of the same before the Court. As stated earlier, earlier notification for acquisition of said land was published on April 16, 1984 and the witness had tried to help the claimants by stating that agreement to sell was executed in July 1984 with a view to inflate the market value of present acquired lands. It would not be out of place to mention here that total consideration of Rs.3,49,999/was paid in four installments. Likewise, vendee, Dinesh Chandra Shankerlal, was cousin of the vendor, Jaikishandas Nagarji Patel and he had paid price of the lands sold as per the price demanded by the vendor. Vendor, Jaikishandas, was in need of money and to wipe out the debts and to meet expenses of other social obligation, he was compelled to sell out lands bearing Survey No.523 situated in village Ichhapore. Vendor, Dinesh Chandra Shankerlal, was having another agricultural land just near the lands sold under sale deed Exh.144 and, therefore, he had paid a fancy price to purchase the lands. We are, therefore, of the view that sale deed Exh.144 to some extent got executed at a higher price with a view to inflate market value of present acquired lands. However, we shall have to find out the correct market price of lands covered by the sale deed Exh.144.

28. In the case of Govindbhai Dajibhai vs. (by his heirs) vs. Special Land Acquisition Officer and another, reported in AIR 1995 Gujarat 200, the Division Bench ruled that, when land under sale deed on which reliance was placed by the claimants for ascertainment of market value of acquired lands, is situated at far distance, and when it was a small piece of land, and that too it was sold to the owner of the adjoining land, no reliance can be placed on such sale deed for determination of market value of acquired lands. Though the sale deed, on which, reliance was placed by the claimants, are not found to be genuine, and reliable, for the purpose of determination of market value for the present acquired lands, in our view, the main anxiety of the Court should be to ascertain and find out the fair and just amount of value of the land under acquisition. The mandate of S.23 of the Act is to see that the affected person in an acquisition proceeding is placed in the same position, as far as possible, as he would have been, had there been no acquisition. So, the ultimate purpose of policy enshrined in S.23 of the Act is to see that the affected person or owner of the property acquired, should get fair and just amount of compensation.

29. Learned counsel for the claimants has, vehemently, submitted that present acquired lands were most suitable because HBJ gas-pipeline was passing nearby acquired lands and this land was more suitable for establishment of gas-based thermal power station. Learned counsel for the claimants had heavily relied on survey report Exh.285 prepared by Chetan Engineers, which was produced at Exh.285. Learned counsel has invited our attention to following paragraphs in support of submission that land was most suitable to establish thermal power station on the acquired lands.

"2.2.0.0 GRID:
A grid baseline parallel to N/S magnetic direction was physically laid at site for a length of about 1.5 Kms. and the first peg was taken at about 50 m. from the Hazira canal. Since the boundary was not demarcated when this line was laid, the first peg was later on observed to fall slightly outside the boundary. For laying the line Zeiss One Second Theodolite Theo IOA was utilised.
2.5.0.0 DETAILING
All existing features like canal, road, fencing, boundary and boundary corners river edge nullahs etc. were detailed by transit cum stadia method using Zeiss One Second Theodolite from the various grid points as fixed.
GENERAL SITE CONDITIONS
3.1.0.0 The area in general is quite barren and sparsely covered by bushes.
3.2.0.0 The approach to site from Surat-Hazira road is by a slab culvert on the Hazira canal.
3.3.0.0. However to counter flood effect in future and which is estimated at about 5 M above M.S.L., a certain amount of filling will be necessary in the area where the plant will be erected.
3.3.3.1 KRIBHCO Plant are is raised to 5.75 M with plinth levels at 6.00 M. and O.N.G.C. area is raised to 6.25 M. with plinth levels at 6.50 M.
3.6.0.0 Along with Tapti river edge there are two jetties one at Magdalia Port and other of KRIBHCO.
3.7.0.0 The entire surrounding area of the plot has been earmarked for a massive industrialization.
The main industries nearby being:
1) Narmada Cement plant at Magdalla Jetty.
2) O.N.G.C. Oil Terminal and LPG Plant.
3) KRIBHCO's Fertilizer Plant
4) Heavy Engineering Workshop of M/s. Larsen And Toubro-Bombay.
5) Heavy Chemicals plants of M/s. Reliance Textile Industries Ltd-Bombay
6) Ship repair complex of M/s. United Breweries-Bombay.

7) G.I.D.C. Estate near Mora village
8) Gujarat Petro-Chemicals Complex between O.N.G.C. and KRIBHCO Plant."

Relying on survey report Exh.285, learned counsel for the claimants vehemently submitted that acquired lands had potentiality as it was surrounded by various industrial establishments and, therefore, the Reference Court had erred in not properly determining market value of present acquired lands. Learned counsel for the claimants submitted that the claim for enhanced compensation at the rate of Rs.70/- per sq.mtr as claimed by the claimants in these appeals, is just and reasonable and, accordingly, determination of market value deserves to be increased as demanded by the claimants.

30. On the other hand, learned counsel for the Acquiring Body has submitted that there was ample evidence on record which clearly shows that acquired lands were barren lands where no agricultural crops were raised and only grass or inferior type of crop like juwar was occasionally raised. Learned counsel for the Acquiring Body has submitted that even the claimants' witnesses had admitted that the land was of inferior quality, fertility of which was badly affected due to flood and water stagnation because the land was uneven and having pits in which water got stagnated. Learned counsel for Acquiring Body submitted that award of Land Acquisition Officer also sufficiently describes situation and fertility of acquired lands and the Land Acquisition Officer had rightly divided acquired lands into three categories and had awarded compensation accordingly.

31. Learned counsel for the Acquiring Body further submitted that, though there was establishment of different industrial units, present acquired lands had remained undeveloped in spite of there being huge industrialization in nearby areas. Learned counsel further submitted that, if there was no development on acquired lands, development charges shall be deducted with respect to the purpose for which land was acquired. Learned counsel for the Acquiring Body placed reliance on the judgment of the Supreme Court in the case of K.Sivadamma vs. Assistant Commissioner and Land Acquisition Officer, reported in AIR 1996 Supreme Court 2886. Relying on the above decision, learned counsel for the Acquiring Body, in the alternative, submitted that even if reliance is placed on the sale deed Exh.144, suitable deduction should be made which according to him would be more than 53% as laid down by the Supreme Court

in the case of K. Sivadamma (supra). Learned counsel for the Acquiring Body further submitted that the Supreme Court, in the judgment referred to by the Reference Court, had determined market value of acquired lands of nearby village Kawas at the rate of Rs.22/- per sq.mtr as in 1988 and, therefore, determination of market value of acquired lands at the rate of Rs.20/- per sq.mtr was on higher side and it deserves to be reduced by making suitable deduction on the head of 'development charges'. Learned counsel for the Acquiring Body further submitted that, if the claimants were to sell their lands, because of uneven area, the claimants would have incurred expenses of levelling the land and converting it into non-agricultural use and, thereafter, dividing it in sub-plots, by setting apart sufficient area for road, drainage and other facilities and, therefore, suitable deduction should be made towards development charges. Learned counsel for the Acquiring Body further submitted that, if suitable deduction is made from market value determined by the Reference Court at the rate of Rs.20/per sq.mtr. the market price of present acquired lands cannot be more than Rs.10/- per sq.mtr.

32. Oral evidence of the claimants coupled with 7/12 extracts produced on record in respect of acquired lands indicated that on acquired lands, though were agricultural lands, no agricultural operations were carried out, and only grass which was used as fodder for cattle, was grown. No satisfactory evidence was led by the claimants in support of their claim that they used to raise crops of wheat, cotton, and juwar on acquired lands. Some of the claimants were carrying on business of milk and they were keeping cattle and were raising grass on acquired lands for providing fodder to cattle. Evidence of witnesses examined by the Acquiring Body which is supported by award of Land Acquisition Officer, clearly shows that the lands were badly damaged due to flood waters as the same were situated in low lying area and having uneven level. Survey report Exh.285 also describes that lands were badly damaged due to flood of river Tapti and sea water. It is pertinent to note that in paragraph 3.3 of the survey report, it was mentioned that, "a number of nullahs are existing in the area which get slightly topped due to tidal effect". It was also mentioned in paragraph 3.3.3.1 that, "KRIBHCO Plant area was raised to 5.75 M with plinth levels at 6.00 M. and O.N.G.C. area was raised to 6.25 M. with plinth levels at 6.50 M". It was mentioned in paragraph 3.4 that, "the south edge of the plot is the bank edge of River Tapti. The river is tidal effected." It was mentioned in paragraph 3.4.3.0 that, "during low tide the river bed

gets exposed except for the dredged channel portion."

33. Witness, Vimalchandra Jeshmal Kotari, Exh.288, examined on behalf of Acquiring Body, had also deposed that acquired land was uneven and water stagnated and when he visited acquired lands for the first time in July 1986, it was very difficult to walk on certain portion of land. He had also deposed that land was low-level land and water from sea used to enter the land at the time of tide and, therefore, water was stagnated on acquired lands. He had emphatically deposed that site levelling work was entrusted to M/s. Bhagirath Engineering Limited and, as per document mark 20/12, total amount of Rs.5,76,86,280/- was spent for levelling land. He also deposed that, because of presence of sulphates and fluorides in the soil of acquired lands, special precautions were required to be taken while erecting foundation of the project.

34. Thus, evidence on record, as narrated above, indicates that site of acquire lands was suitable for erection of thermal power station because of availability of water, electricity and HBJ gas-pipeline, but, at the same time, the Acquiring body had incurred heavy expenditure in levelling lands, and had to take special care because of wet-soft nature of acquired lands, for erecting foundation of thermal power station.

35. The Reference Court, in paragraph 48 of the impugned judgment, had, rightly, observed that prices of the lands were always on rising side and when the land was acquired or at least when notification was issued, the land was not fully developed and, naturally, developing expenses for development of the lands were required to be incurred for making the land useful for the purpose for which it was acquired and huge amount had already been spent by the NTPC for development of the land. The Reference Court, in the said paragraph, had observed that the claimants with apprehension in their mind that they would get lesser amount than claimed had not produced previous awards rendered in respect of lands of adjoining villages before the Reference Court. It was further observed that the Acquiring Body did not produce or rely upon previous award with a view to see that the Court may not enhance amount of compensation as per the market value determined in the previous awards of the Reference Court with regard to acquired lands of adjoining villages. The Reference Court had further observed that lands of village Kawas, which was adjoining village, were acquired for the purpose of Hazira Industrial Colony by GIDC, notification of which under

Section 4(1) of the Act was published in the year 1988, wherein, the Reference Court in the references filed under Section 18 of the Act by the claimants had determined market value of acquired lands of village Kawas as in 1988 at the rate of Rs.25/per sq.mtr. The said determination of market value was challenged by the claimants, wherein, the High Court had increased market value of acquired lands to Rs.33/- per sq.mtr. It was observed by the Reference Court that the said determination of market value by the High Court was challenged in the Supreme Court by way of filing Civil Appeals Nos.11924 of 1996 and 11934 of 1996 arising out of SLP (C) Nos. 18 to 68, 69 of 1995, the Supreme Court had reduced amount of compensation to Rs.22/- per sq.mtr after deducting 1/3rd from market value determined by the High Court towards development charges. Though judgment of the Supreme Court was not produced before the Reference Court either by the claimants or by the Acquiring Body or by the State Government, learned Trial Judge found the said judgment and noted down in his diary. Map Exh.325, and map of development plan of HADA produced on record of this case show that village Kawas was adjoining to present acquired lands. The Reference Court had given deduction of Rs.2/- because of gap of two years between issuance of notifications of present acquired lands and subsequently acquired lands of village Kawas.

36. As observed by us in the foregoing paragraphs, sale deed Exh.144 relied upon by the claimants did not reflect prevalent market price of agricultural lands of village Ichhapore as vendee, Dinesh Chandra Shankerlal, had paid fancy price as he needed other agricultural land, because his own agricultural land was just near, i.e. two/three fields away from the lands sold under sale deed Exh.144. Vendor, Jaikishandas N. Patel, Exh.268, had deposed that agreement to sell was executed in 1984 but the said agreement to sell was not registered and the witness had not produced the agreement to sell or copy of the same before the Reference Court. Likewise, vendor, Jaikishandas N. Patel, had sold away his agricultural lands as he was in need of money. Vendee, Jaikishandas N. Patel, Exh.268, also admitted in his evidence that vendee, Dinesh Chandra Shankerlal, was his cousin and whatever price he had demanded of his land, Dinesh Chandra Shankerlal had readily agreed to purchase the land at the price quoted by him. Learned counsel for the Acquiring Body has seriously challenged genuineness of sale deed Exh.144 by submitting that no agreement to sell was entered in the year 1984 as deposed by witness Jaikishandas N. Patel (Exh.268) and,

therefore, the witness could not produce it. Counsel for the Acquiring Body submitted that the story of about the agreement to sell was made out to inflate market value of present acquired lands. It is further submitted that sale deed Exh.144 was a post-notification sale i.e. executed nine months after the notification under Section 4(1) of the Act and, therefore, it cannot be made basis for the determination of the market value of the present acquired lands.

37. In our view, market value as indicated in sale deed Exh.144 was inflated one, but, at the same time, the claimants cannot be non-suited on the ground that they had not produced relevant materials and evidence for the purpose of determination of market value of present acquired lands. The acid test the Court should always adopt in determining market value in the matter of compulsory acquisition would be to eschew feats of imagination sit in the arm chair of a prudent willing purchaser, it should consider whether the willing vendee would offer the rate which the trial court proposes to determine the compensation. (See: JT 1996 (9) S.C. 537: Gujarat Industrial Development Corporation vs. Narottambhai Morarbhai & Another). In the present acquisition, nearly 230 Hectare of land came to be acquired for the purpose of NTPC, out of which, 138 Hectare of land were government land and 92 Hectare of land were of private owners. No prudent purchaser would purchase large extent of land on the basis of sale of small extent of land in the open market. Sale deed Exh.144 covered area admeasuring 2 Acres 11 Gunthas situated at village Ichhapore. Witness, Jaikishandas N. Patel, Exh.268, in cross examination, had admitted that village Ichhapore was at a distance of 7 kms from acquired lands of village Mora. Before us, there was no other evidence in nature of sale deed of same village Mora for the purpose of determination of market value of present acquired lands and, therefore, there was no alternative left, but to find out market value of present acquired lands by placing reliance on sale deed Exh.144, even though it related to better situated lands of a different village. As stated earlier, sale price of land under sale deed Exh.144 was approximately Rs.38/- per sq.mtr. which was fancy price paid by the vendee as he was in need of another agricultural land. It shall be kept in mind that land of sale deed Exh.144 was adjoining to agricultural lands of vendee, Dinesh Chandra Shankerlal and, therefore, he had paid higher price. The said lands were agricultural lands situated in village Ichhapore, which was on the northern side and at a distance of 7 kms from acquired lands. The present

acquired lands were badly affected as they had lost fertility because of frequent tides of sea and flood in river Tapti. The agriculturists had also stopped cultivating the land because it had become uncultivable. Other minus factors were that the vendee had paid inflated price in purchasing lands of sale deed Exh.144 and furthermore it was a post-notification sale deed. Taking into consideration overall view of the facts and situation as emerging from the record of present appeals, in our opinion, deduction of Rs.5/- per sq.mtr. will have to be made to arrive at price, which would have been fetched for agricultural lands of sale deed Exh.144. If deduction of Rs.5/- per sq.mtr. is made from the price of Rs.38/- per sq.mtr, as mentioned in the sale deed Exh.144, the net price would be Rs.33/- per sq.mtr. In our view, agricultural lands of sale deed Exh. 144 could not have fetched price of more than Rs.33/- per sq.mtr.

38. It is trite proposition that prices fetched for small plots cannot form safe bases for valuation of large tracts of land as the two are not comparable properties. The principle that evidence of market value of sales of small developed plots is not a safe guide in valuing large extents of land has to be understood in its proper perspective. The principle requires that prices fetched for small developed plots cannot directly be adopted in valuing large extents. However, if it is shown that the large extent to be valued does admit of and is ripe for use for building purposes; that building lots that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of a hypothetical lay-out could with justification be adopted, then in valuing such small, laid-out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation of roads and other civic amenities; expenses of development of the sites by laying-out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realisation of the price; the profits on the venture, etc. are to be made, In Brig. Sahib Singh Kalha vs. Amritsar Improvement Trust, reported in AIR 1982 SC 940, the Supreme Court indicated that deductions for land required for roads and other developmental expenses can, together, come up to as much as 53%. but the prices fetched for small plots cannot directly be applied in the case of large areas, for the reason that the former reflects the 'retail' price of land and the latter the 'wholesale' price. In the very nature of things, the exercise that we make,

must share the imperfections of the evidence on record. But then, some element of speculation is inevitable in all valuations. In the best of exercises some measure of conjecture and guess-work is inherent in the very nature of the exercise. [See: (i) Administrator General of West Bengal vs. Collector, Varanasi, reported in AIR 1988 Supreme Court 943: (ii) K.S. Shivadevamma vs. Assistant Commissioner and Land Acquisition Officer and another, AIR 1996 Supreme Court 2886]

39. The evidence as discussed above indicates that agricultural lands of sale deed Exh.144 were situated in a better locality as compared to present acquired lands, which were found to be of uneven level and badly affected due to flood waters and soil of lands had lost its fertility and had become barren and fallow lands. The present acquired lands covered a vast extent of area of 92 Hectares as compared to lands of sale deed Exh.144 admeasuring 2 Acres and 11 gunthas, i.e. less than 1 Hectare. No prudent purchaser would have purchased large extent of lands on the basis of sale of small extent of land in the open market. As noted earlier, lands under acquisition were agricultural lands of uneven level and, if the claimants wanted to sell the lands in the open market, they would have incurred heavy expenditure for levelling the lands and converting the same into non-agricultural use, and then dividing them into small plots and setting apart lands for laying out roads, drainage and providing other civic amenities. For the development of lands, the claimants would have incurred expenses of minimum 33.1/3%. In our view, deduction of minimum 1/3rd towards development charges from the price fetched for sale deed Exh.144 which we have arrived at the rate of Rs.33/- per sq.mtr. shall have to be applied to ascertain the market value of present acquired lands. If deduction of 1/3rd is applied to the market price of Rs.33/- per sq.mtr. market price of present acquired lands can be ascertained at Rs.22/- per sq.mtr as on February 21, 1986. In our view, present acquired lands would not have fetched more than Rs.22/per sq.mtr and we are of the view that market value ascertained by us at the rate of Rs.22/- per sq.mtr for the present acquired lands on the relevant date would be just, adequate and reasonable compensation to be awarded to the claimants for their acquired lands.

40. The Reference Court, for the purpose of determination of market value of present acquired lands, had placed reliance on the judgment of the Supreme Court, rendered in Civil Appeals Nos.11924 and 11934 of 1996

arising out of SLP (C) Nos. 18268-69 of 1995, which was noted down in the diary of the learned Judge of the Reference Court, wherein, the Supreme Court had determined market value of acquired lands of adjoining village Kawas at the rate of Rs.22/- per sq.mtr, the notification of which under Section 4(1) of the Act was published in official gazette on December 15, 1986 and last publication of the same was on December 29, 1989. Though the decision of the Supreme Court referred to by the learned Judge as found noted in his diary is a reported decision in JT 1996 (9) SC p.537 in the case of Gujarat Industrial Development Corporation vs. Narottambhai Morarbhai & Another, neither counsel for the Acquiring Body nor counsel for the claimants have invited our attention to it. The facts of the above acquisition case were that agricultural lands of village Kawas were acquired for the public purpose of GIDC and the Land Acquisition Officer had offered compensation ranging between Rs.4.75 per sq.mtr to Rs.7.00 per sq.mtr. In the references filed under Section 18 of the Act, the Reference Court had enhanced compensation to Rs.25/- per sq.mtr. In appeals filed by the claimants the High Court had enhanced the compensation for acquired lands of village Kawas to Rs.33/- per sq.mtr. The Supreme Court, in the appeals filed by the Acquiring Body and State of Gujarat had sliced down the amount of compensation awarded by the High Court from Rs.33/- by giving deduction of 1/3rd towards development charges, and, thereby, had determined market value of acquired lands of village Kawas at the rate of Rs.22/per sq.mtr. The notification of acquired lands of village Kawas under Section 4(1) of the Act was last published on December 29, 1989. The Reference Court had deducted Rs.2/- per sq.mtr., because of gap between two notifications, i.e. notifications published of acquired lands of village Kawas and present acquired lands, from the determination of market value determined by the Supreme Court at the rate of Rs.22/- per sq.mtr and had determined market value of present acquired lands at the rate of Rs.20/per sq.mtr. Though the judgment of the Supreme Court was not produced before the Reference Court to establish the comparability of the lands of village Kawas with the present acquired lands. The claimants had relied upon sale deeds Exh.102 to Exh.121 of very village Kawas for determination of market value of present acquired lands. The Acquiring Body had also produced awards at Exh.315 and 316 made by Land Acquisition Officer in respect of lands of village Kawas. In view of the above, oral and documentary evidence adduced by the claimants and the Acquiring Body, there was sufficient evidence before the Reference Court to compare present acquired lands with

the lands of village Kawas. Therefore, in our view, determination by the Supreme Court in respect of market value of acquired lands of village Kawas would also be relevant and comparable to ascertain market value of present acquired lands. Furthermore, from the award of Land Acquisition Officer, Exh.22, map Exh.88, and development map of Hazira Area Development Authority, it becomes evident that present acquired lands and lands of village Kawas were included in the development plan and many industrial units were established from year 1982 onwards in the surrounding villages. On the lands of village Ichhapore, KRIBHCO was established in the year 1982 and for the lands which were acquired for KRIBHCO in the year 1982, the Division Bench of this Court in First Appeals Nos.7868 of 1999 to 7875 of 1999 had determined market value of lands of village Icchapore as on February 18, 1982 at the rate of Rs.12/- per sq.mtr. In our view, the Reference Court had not committed any error in placing reliance on the decision of the Supreme Court in respect of determination of market value of acquired lands of adjoining village Kawas. The notification with regard to acquired lands of village Kawas was last published on December 29, 1989 and, therefore, there was gap of approximately 3.1/2 years between two notifications of present acquired lands and notification of acquired lands of village Kawas. We are conscious that determination by the Supreme Court for agricultural lands of village Kawas cannot be said to be prior in point of time and the award cannot be called 'previous award' for the purpose of determination of market value of present acquired lands which were acquired earlier in point of time. But, in our view, determination of market value of lands of village Kawas reflects that, in the adjoining villages of Kawas and Ichhapore, many industries were established. In view of the fact that many industrial units had come up in the surrounding villages of acquired lands, present acquired lands had become potential for being put into non-agricultural use. Because of availability of HBJ gas-pipeline which was passing through acquired lands, which was most suitable for NTPC to erect its gas-based plant, in our opinion, no deduction should be made from the market value determined by the Supreme Court for acquired lands of village Kawas which was Rs.22/- per sq.mtr. We had not made any deduction because acquired lands were more suitable and beneficial for NTPC to construct its project on acquired lands because of availability of high-tension electricity and HBJ gas-pipeline near acquired lands. Since acquired

lands were having these advantageous features and lands

were more suitable and beneficial to the Acquiring Body to install their gas-based thermal power project, we have come to the conclusion that no deduction should be made on account of difference of 3.1/2 years between notifications of present acquired lands and acquired lands of village Kawas. In our view, the Reference Court had not taken into consideration the above aspects and committed error in deducting Rs.2.00 per sq.mtr from the market value of acquired lands of village Kawas.

41. It may also be stated that the claimants had placed reliance on Exh.32, which was an order of the Collector, Surat, dated September 28, 1990, by which, lands of village Hazira were granted to ESSAR Steel Division of Gujarat Limited for establishing its industry. By the said order, 4,00,000 sq.mtrs of land were granted to ESSAR at the rate of Rs.22.20 ps per sq.mtr. It should be noted that said lands were sold to ESSAR in the year 1990 at the rate of Rs.22.20 ps per sq.mtr. Similarly, the claimants had also placed reliance on Exh.35 which was an order of the Collector, Surat, dated November 9, 1989, allotting land admeasuring 2400 sq.mtrs of village Mora for the purpose of establishing pump house and valve station for ESSAR Steel Industries at village Mora, Taluka: Choriyasi, at the rate of Rs.20/- per sq.mtr. It should be noted that the

above lands of village Mora were granted to M/s. ESSAR Steel Limited in the year 1989 at Rs.20/- per sq.mtr. The abovereferred to two orders also indicated that price of present acquired lands at the best could not have been fetched more than Rs.20/- per sq.mtr, but, because of special adaptability and suitability of acquired lands for the NTPC, we have determined market value at the rate of Rs.22/- per sq.mtr for present acquired lands ignoring the fact that for acquired lands of same village were granted to ESSAR Industries Limited at the rate of Rs.20/- per sq.mtr in the year 1989.

42. Learned counsel for the Acquiring Body has vehemently submitted that the Reference Court had awarded uniform rate of compensation in respect of agricultural lands as well Kharabha lands, which was erroneous. In our view, submission of learned counsel for the Acquiring body deserves to be rejected. The entire lands acquired were agricultural jirayat type lands. It would be trite to say that Kharabha lands cannot be cultivated and it is totally unfit for cultivation. We may mention here that

Kharabha land was part of agricultural field which could have been used for agricultural operations. If the claimants would have converted the lands into non-agricultural use and sold it in the open market, Kharabha lands would have been sold at the same rate at which other land was sold. The Supreme Court, in the case of Gujarat Industrial Development Corporation vs. Narottambhai Morarbhai & Another reported in JT 1996 (9) SC 365, had ruled that, "though the land was waste land but being possessed of potential value was fit for building purposes and is situated in outskirts of industrial city, the courts below were right in taking into consideration potential value of the land for determination of compensation". In view of the observations of the Supreme Court in the abovereferred to decision, we are of the opinion that, when the lands were acquired for non-agricultural use, the Reference Court was justified in awarding uniform rate of compensation for agricultural lands and Kharabha lands, which were part of agricultural lands. As mentioned in the award of the Land Acquisition Officer Exh.22, the area of Kharabha land was only covering only 3000 sq.mtr. approximately. This area was acquired which was to be used by the NTPC for erection of its plant. Therefore, in our view, the Reference Court was justified in awarding uniform rate of compensation for Kharabha land on par with agricultural lands.

43. The Division Bench of this Court, in First Appeals Nos.1431 of 1999 with First Appeals Nos.1853 of 1999 to 1879 of 1999, had dealt with similar question whether compensation at uniform rate in respect of Kharabha land as compared with agricultural lands can be awarded when both the lands are placed under compulsory acquisition for non-agricultural or industrial purpose. The Division Bench, after considering definition of land under Section 3(R) of the Act, as well as definition of land under various tenancy laws and definition of 'allied pursuits' as defined under Section 2A of the Bombay Tenancy and Agricultural Lands Act, 1948, and Section 3 of the Land Revenue Code, 1897, had ruled that kharaba is a land out of which the concerned agriculturist derives benefits in as much as such kharaba is used for efficient cultivation of the land to which the kharaba is attached. Mostly kharaba land is used as threshing floor where grain is separated from husk. Kharaba land is also used for the purpose of storing or keeping agricultural implements by the concerned agriculturist. By no stretch of imagination, it can be interpreted that kharaba land is not a part of agricultural field, wherein no agricultural operations can be performed. The Division

Bench, in the abovereferred to First Appeals, had also considered judgment of learned single Judge of this Court, reported in Gujarat Law Times, Vol. 23, page 84 [First Appeal No.149 of 1978] Pinakin B. Amin vs. Spl. Land Acquisition Officer, as under:

" In the aforesaid case, the learned single Judge has observed that, so far as the kharaba portion of the acquired land admeasuring 4 gunthas was concerned, the Reference Court without applying its mind to the fact that kharaba land was acquired for non-agricultural use, treated on par with the other acquired agricultural lands, and mechanically awarded compensation of Rs.1 per Are with respect to kharaba land. Learned single Judge has observed that there was no reason to make any distinction between the kharaba portion and the remaining portion of the acquired agricultural lands. It was further held that so far as the agricultural operations are concerned, kharaba land would not yield anything, but when the lands were acquired for non-agricultural purpose, the lands ought to have been valued on par with the agricultural lands. Kharaba land is a part of the agricultural field to carry out the ancillary things connected with the agricultural operations. It would be trite to say that kharaba land cannot be cultivated and it is totally unfit for cultivation. We may mention here that kharaba land is a part of agricultural field, which can be used for any agricultural operations. Therefore, we hold that the Reference Court has not erred in treating kharaba land on par with the agricultural land and awarding uniform compensation to the area covered by kharaba land of the acquired agricultural lands. We endorse the view of learned single Judge reported in Gujarat Law Times, Vol, 23, page 84 (First Appeal no.149 of 1978 decided on July 24, 1985). We are of the opinion that kharaba land which is part of agricultural lands and which is fit for cultivation cannot be distinguished from agricultural lands and, therefore, the amount of compensation cannot be reduced on the ground that it is not an agricultural land. The utility of the land to the agriculturists and those who are going to acquire the same are to be taken into consideration while determining the amount of compensation in all types of land."

In view of the above observations of the Division Bench of this Court in the abovereferred to First Appeals, we are of the opinion that the Reference Court had not committed any error in awarding uniform compensation for Kharabha land by treating it as agricultural land.

44. We notice that the Reference Court, in the operative portion of the order, had directed that some of the lands were of new tenure lands and, hence 5% of the amount awarded should be deducted. The learned counsel for the claimants has seriously objected to the aforesaid direction of the Reference Court by placing reliance on the decision of the Supreme Court in the case of State of Maharashtra vs. Babu Govind Gavate, reported in AIR 1996 Supreme Court 904.

45. In our opinion, in view of the principle laid down by the Supreme Court, in the case of State of Maharashtra vs. Babu Govind Gavate, reported in AIR 1996 Supreme Court 904, the deduction from the market value under Section 43 of the Bombay Tenancy and Agricultural Land Act, 1948, is not permissible. It has been held that sanction required under Section 43 of the said Act is only when there is a bilateral valid agreement between the owner and a third party purchaser or a lessee or a mortgagee, etc. as envisaged under Section 43(1) but, when the State exercises its power of eminent domain and compulsorily acquires the land, question of sanction under Section 43 does not arise, and deduction of 1/3rd of market value under Section 43 is not permissible. In view of the mandate given by the Supreme Court, we are of the opinion that the Reference Court was not justified in directing that 5% government share should be deducted from the awarded amount in case of new tenure lands and, therefore, the said direction will have to be set aside.

46. As a result of foregoing reasons, First Appeals Nos.742 of 1998 to 792 of 1998 filed by the Acquiring body, are dismissed.

47. First Appeals Nos.5388 of 1997 to 5408 of 1997 filed by the claimants are partly allowed. The market value of the acquired lands of village Mora on the relevant date i.e. February 21, 1986, is determined at the rate of Rs.22/- per sq.mtr. The common judgment and award dated July 25, 1997, rendered by learned Assistant Judge, Surat, in Land Reference Cases Nos.118 of 1988 to 168 of 1988 is modified to the extent that the claimants would be entitled to compensation of acquired lands of village Mora at the rate of Rs.22/- per sq.mtr. minus the amount awarded by the Land Acquisition Officer, with all the statutory benefits under Sections 23(1-A) and 23(2) and interest under Section 28 of the Act. The direction given by the Reference Court to deduct 5% government share from the compensation payable to the claimants in case of new tenure lands is set aside. It is further held that the claimants shall not be entitled

to solatium on the 12% increase awarded under Section 23(1-A) of the Act and no interest shall be payable on the amount of solatium as per the decision of the Supreme Court in the case of State of Maharashtra vs. Maharau Srawan Hatkar, reported in Judgment Today 1995 (2) S.C. 583. The Office is directed to draw decree in terms of this judgment. There shall be no order as to costs in both the groups of appeals.

September 15, 2000 (M.H. Kadri, J.)

(D.P. Buch, J.)

(swamy)